date:

to: Chief, Examination Division, Manhattan
Attn: Revenue Agent Henry Ng

from: District Counsel, Manhattan (CC:NER:MAN)

subject: ██████████████████████

██████████████████████

Form SS-10 (Tax Years ████ and ████)
Consent to Extend the Statute of Limitations on Assessment

STATUTE OF LIMITATIONS EXPIRES ██████████████

UIL Nos.   6501.08-00
            6501.08-10
            6501.08-17

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INTRODUCTION

This memorandum is in response to your request for advice in the above-captioned matter. Specifically, you requested that we provide advice on who may execute Forms SS-10 (Consent to Extend the Time to Assess Income Taxes) on behalf of ██████████ ("████████") and ████████████████████ ("████████") for the taxable years ████ and ████.
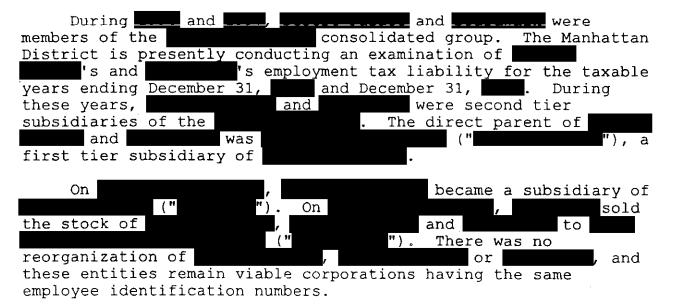
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The advice given below is subject to post review by the Chief Counsel's National Office. Therefore, we ask that you wait ten working days from the date of this memorandum, or until you hear of approval, before acting on this advice.

ISSUES

1.   Which entity is the proper entity to execute a Form SS-10 for ███████████ and ██████████ for the ████ and ████ taxable years?

2.   What specific language should be used, if any, on the Form SS-10 for ███████████ and █████████ for the ████ and ████ taxable years?

FACTS

THE ADVICE IS RENDERED ON THE BASIS THAT ALL THE REPRESENTATIONS AND FACTS IN THIS MEMORANDUM ARE CORRECT. WE RECOMMEND THAT YOU VERIFY THIS INFORMATION. IF ANY OF THE REPRESENTATIONS AND/OR FACTS ARE INCORRECT OR CANNOT BE SUBSTANTIATED, WE MAY NEED TO MODIFY OUR ADVICE.

During ████ and ████, ████████████ and █████████ were members of the ██████████████ consolidated group. The Manhattan District is presently conducting an examination of ████████ 's and ██████████ 's employment tax liability for the taxable years ending December 31, ████ and December 31, ████. During these years, ███████████ and █████████ were second tier subsidiaries of the ██████████. The direct parent of ████████ and ██████████ was ██████████ ("██████████"), a first tier subsidiary of ██████████.

On ███████████████, ██████████████ became a subsidiary of ██████████████ ("████████"). On ██████████ sold the stock of ████████, ("████████"). There was no reorganization of ████████████, ███████████ or ██████████, and these entities remain viable corporations having the same employee identification numbers.

DISCUSSION

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the

responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in Section 6501(c)(4)(B), requires Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form SS-10. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case file.

1.   Which entity is the proper entity to execute a Form SS-10 on behalf of ██████████ and ██████████ for taxable years ████ and ███?

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For employment taxes, the form used by the Service to extend the limitations period on assessment is Form SS-10 (Consent to Extend the Time to Assess Employment Taxes).

Unlike the income tax liability of a consolidated group, where, as a general rule, the common parent acts as sole agent for each member of the group, each member of a consolidated group must act on its own behalf with respect its own employment tax. Employment tax returns are not filed on a consolidated basis and, therefore, the consolidated return regulations (Treas. Regs. § 1.1502-1 et seq) are not helpful to the issue at hand. See I.R.C. § 1502 (requiring the Internal Revenue Service to prescribe regulations concerning the tax liability of any affiliated group of corporations making a consolidated return). Thus, the Forms SS-10 should be executed by a current officer of

███████████ and ████████.

2.   What specific language, if any, should be used on the
      Form SS-10 for ████████ and ████████ for the ██
      and ██ taxable years?

This case does not require any special caption or language on
the SS-10. Therefore, the caption of the Form SS-10 extending
the statute of limitations for ████████████ should simply read
as follows:

      "████████████████████ (E.I.N.   )"

The caption of the Form SS-10 extending the statute of
limitations for ████████ should simply read as follows:

      "██████████████████████████ (E.I.N.   )"

Should you have any questions regarding this matter, please
contact Paul Darcy at (212) 264-5473.

                              LINDA R. DETTERY
                              District Counsel

                    By: _____
                           PETER J. LABELLE
                           Assistant District Counsel

Noted:

_____
LINDA R. DETTERY
District Counsel

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